NUCORP ENERGY, INC.

IBLA 84-633 Decided August 21, 1985

Appeal from a decision of the Associate District Manager, Grand Junction, Colorado, Bureau of Land Management, declaring a well not to be a unit well capable of extending unitized Federal oil and gas leases. C-13412, etc.

Reversed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

Where the record establishes that a party holding the entire working interest in a tract has committed that interest to a unit agreement which has been subsequently approved in the public interest, but the tract was found not to be committed on the erroneous belief that less than the entire working interest was committed, a decision holding an oil and gas well on the tract not to be a unit well will be reversed.

APPEARANCES: James D. Voorhees, Esq., and Margaret G. Leavitt, Esq., Denver, Colorado, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Nucorp Energy, Inc. (Nucorp), operator of the Gasaway Unit, has appealed from a decision of the Associate District Manager, Grand Junction, Colorado, Bureau of Land Management (BLM), dated April 5, 1984, holding that the Sheffield No. 1-17 well located within the Gasaway Unit (Contract No. 14-008-0001-17041), is not a unit well. The basis for the decision was that the tract of land on which the well is located (unit tract 39) was not committed to the unit. As a consequence, the decision found that drilling operations on the well which were on going as of the September 30, 1981, expiration date of certain unitized Federal oil and gas leases (C-13412, C-13550, C-13801, C-13802, and C-23902), could not legally suffice to extend the term of the leases. 1/

1/ The status of Sheffield No. 1-17 as a unit well is critical to the continued existence of the leases because any lease for which, under a unit plan of development or operation, actual drilling operations were commenced prior

Having thus applied the stick of impending termination of the leases, BLM extended the carrot. The decision noted that renewed drilling of unit well No. 2-10 could save the leases as outlined in the District Manager's prior letter of November 30, 1983, to appellant. That letter provided in pertinent part:

> The above listed leases all have primary term expiration dates of September 30, 1981, and are fully committed to the Gasaway Unit. We have determined that operations were in progress across September 30, 1981, on Well No. 2-10, sec. 10, T. 6 S., R. 100 W., which is located on partially committed fee lands. We have also determined that your operations have not progressed to the point where we can determine if the requirements of 43 CFR 3107.2-2, [2/] Diligent Operations, have been fulfilled. If operations are not diligent, the leases would not be eligible for extension as provided by 43 CFR 3107.2.
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> Please be advised of the following:
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> * * * * * * *
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> 3. NUCORP must resume actual drilling operations on Well No. 2-10, sec. 10, T. 6 S., R. 100 W., with a drilling rig capable of reaching total depth (10,560 feet) by July 30, 1984, and continue such drilling operations until total depth is reached or to a formation known to contain hydrocarbons in order to earn any drilling extension as provided in 43 CFR 3107.2. Failure to resume actual drilling on Well No. 2-10 will result in a recommendation that Lease C-13412, C-13801, C-13802, C-13550, and C-23902, expired effective September 30, 1981, by their own terms. No new activity will be permitted on the referenced leaseholds until the status of the leases are [sic] determined. Failure to commence drilling operations solely due to NUCORP's failure to meet road standards will not serve to extend the obligation date. [Emphasis in original.]

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fn. 1 (continued)
to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1982). Further, a lease committed to an approved unit plan shall remain in effect so long as the lease remains subject to the plan provided that production in paying quantities is had under the unit prior to expiration of the term of the lease. 30 U.S.C. § 226(j) (1982); 43 CFR 3107.3-1.

BLM concedes in a letter of Nov. 30, 1983, from the District Manager to appellant that if the leases are extended through Oct. 31, 1981, the effective date of approval of unit participating area "A," they would be further extended due to production in the Gasaway unit.

2/ This regulation is currently codified at 43 CFR 3107.1.

Appellant contends in its statement of reasons for appeal that the BLM finding that unit tract 39 on which the Sheffield No. 1-17 well is located was never committed to the Gasaway Unit is an error. It is asserted that Tipperary Oil & Gas Corporation (Tipperary), appellant's predecessor as unit operator, held 100 percent of the "working interest" 3/ in oil and gas in unit tract 39 on June 8, 1976, when Tipperary, as unit operator and proponent, committed all its interest in the lands covered by the Gasaway Unit agreement (including unit tract 39) to the unit. Appellant further argues that the Sheffield No. 1-17 well was treated as a unit well in communications between appellant and the Department. Hence, appellant alleges the drilling of this well (spudded on August 11, 1981) over the expiration date of the subject leases, which was completed as a shut-in well awaiting pipeline connection, suffices to extend the subject leases.

In answer to appellant's brief, counsel for BLM refers to the November 3, 1978, memorandum from the Acting Oil and Gas Supervisor, Geological Survey (Survey), to the Colorado State Director, BLM, which advised the latter of the approval of the Gasaway Unit agreement and indicated that unit tract 39 was "not committed." Counsel asserts this finding was based on Exhibit B to the unit agreement submitted by Tipperary which showed Chorney Oil Company to have a 50-percent working interest in tract 39. Although BLM on appeal does not contest the apparent error in Exhibit B, it contends that tract 39 was expressly excluded from the unit as approved by the November 3, 1978, memorandum. BLM alleges that neither appellant's predecessor nor the Oil and Gas Supervisor intended to include tract 39 in the unit.

On June 8, 1976, Tipperary executed the Gasaway Unit agreement which was filed with Survey on July 19, 1976. The agreement expressly provided that "the parties hereto commit to this agreement their respective interests in the below-defined unit area" (Agreement at page 1). With respect to the definition of the unit area the agreement provided:

> 2. UNIT AREA. The area specified on the map attached hereto marked exhibit A is hereby designated and recognized as constituting the unit area, containing 28,999.10 acres more or less.
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> Exhibit A shows, in addition to the boundary of the unit area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator. Exhibit B attached hereto is a schedule showing to the extent known to the

3/ "Working interest" is defined as follows in the regulations:

"An interest held in unitized substances or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in the agreement, the owner of such interest is vested with the right to explore for, develop, and produce such substances. The rights delegated to the unit operator by the unit agreement are not regarded as a working interest." 43 CFR 3180.0-5.

> Unit Operator the acreage, percentage, and kind of ownership of oil and gas interests in all land in the unit area.

(Agreement at page 2).

Attached to the unit agreement as originally submitted was a map of the unit area (Exh. A), which included tracts 48 and 49 (redesignated unit tract 39), totalling 200 acres. Unit tract 39 is situated, for the most part, in the W 1/2, sec. 17, T. 6 S., R. 99 W., sixth principal meridian, Garfield County, Colorado, and is private land. Also attached to the unit agreement was a schedule showing the ownership of oil and gas interest within the unit (Exh. B). Exhibit B as originally submitted indicated that E. N. Shaw and Gladys M. Shaw owned a 50 percent interest in unit tract 39, which was leased to Tipperary and Chorney Oil Company and that Edward Johnson owned the remaining 50 percent, which was similarly leased. 4/ Thus, Exhibit B indicated that Tipperary and Chorney Oil each held a 50-percent working interest in unit tract 39. By memorandum dated November 3, 1978, the Acting Oil and Gas Supervisor notified the State Director, Colorado State Office, BLM, that the Gasaway Unit had been approved and that the unit area included in part Federal leases C-13412, C-13550, C-13801, C-13802, and C-23902.

The Acting Oil and Gas Supervisor also stated that "[a]ll lands and interests are fully committed" except certain Federal and patented tracts, including "patented [tract] * * * 39." As noted by the parties to this appeal, this latter finding was apparently based on the erroneous Exhibit B showing that Chorney Oil, which had not joined in the agreement, held a working interest in tract 39.

Effective October 5, 1979, the Acting Area Oil and Gas Supervisor, Survey, accepted American Resources as a successor unit operator. Effective April 23, 1981, the Deputy Conservation Manager, Oil and Gas Operations, Survey, accepted appellant as a designated agent of American Resources with respect to drilling a well in the NE 1/4 SW 1/4, sec. 17, T. 6 S., R. 99 W., sixth principal meridian, Garfield County, Colorado (later designated the Sheffield No. 1-17 well). By letter to appellant dated March 26, 1981, the Deputy Conservation Manager stated:

> You advised that Nucorp will be acting as agent for American Resources in drilling the Gasaway Unit and are requesting approval of a location in the S 1/2, section 17, T. 6 S., R. 99 W. This letter will serve to approve that location and verify that a well at that location will be counted as a unit well. [Emphasis added.]

4/ The record also contains a revised copy of Exhibit B which indicates that the Shaws actually owned a 25-percent interest in unit tract 39, with Richard Sheffield also owning a 25-percent interest. The revised exhibit B shows American Resources Management Corporation (American Resources) as the holder of the working interests above the Entrada formation and Tipperary as the holder of the working interests below that formation.

Effective February 22, 1982, the Deputy Minerals Manager for Oil and Gas, Central Region, Minerals Management Service (MMS) (formerly Survey), accepted appellant as the successor unit operator.

By letters dated July 27, 1982, and August 8, 1983, appellant informed the Department it had spudded the Sheffield No. 1-17 well on August 11, 1981, perforated at selected intervals in the Dakota formation, and that the well was shut-in awaiting a pipeline connection. These letters constituted a report of appellant's operations and appellant's plans for development of the unit. Subsequently, BLM found that the Sheffield No. 1-17 well was not a unit well and issued the decision from which this appeal is taken.

Accordingly, the first issue raised by this appeal is whether unit tract 39 was, in fact, committed to the unit agreement. If the answer is affirmative, the question remains whether the error of fact which caused the Department to believe tract 39 was not committed precludes consideration of tract 39 as part of the unit and the Sheffield No. 1-17 well thereon as a unit well.

Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1982), authorizes lessees to unite, for the purpose of more properly conserving the natural resources of any oil or gas field, in collectively adopting and operating under a unit plan of development or operation "whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest." Such a plan was entered into by Tipperary which, by its terms, committed all of Tipperary's interest in the Gasaway Unit area, including whatever interest it held in unit tract 39. Thus, Tipperary had committed its working interest in tract 39 to the unit agreement even though Survey did not recognize the tract as "fully committed" because of the apparent outstanding working interest of Chorney Oil. We note that Survey certified that the unit plan of operation is necessary and advisable in the public interest for the purpose of more properly conserving natural resources when it approved the agreement on November 3, 1978.

This Board has previously recognized the policy of BLM regarding lease commitment to the effect that any tract in which a working interest has not been committed is considered as not committed and is not subject to the unit agreement. Coors Energy Co., 82 IBLA 212, 214 (1984). However, in this case appellant has presented evidence that, in fact, Tipperary, the proponent of the unit, held 100 percent of the working interest in tract 39 when it committed all its interest to the agreement or shortly thereafter. Thus, appellant had a title opinion prepared for tract 39. It appears from the title opinion, as supplemented (Exhs. C and D to appellant's statement of reasons), that T. Edward Johnson and Jane H. Johnson issued an oil and gas lease for 10 years on September 8, 1971, to Raymond Chorney. It further appears that the Chorney lease was assigned to Tipperary in two separate assignments dated October 7, 1975, and December 9, 1975 (Exhs. A and B to appellant's statement of reasons). In addition to the Johnson lease, the title opinion shows a lease by E. N. Shaw and Gladys M. Shaw to Tipperary dated August 13, 1976, and a lease by Orville C. Altenbern, Leo R. Altenbern, and N. Max Altenbern to Tipperary dated August 12, 1976, both leases having a term of 5 years subject to extension by production (Exh. C to appellant's statement of reasons). Thus, it appears the entire working interest in tract 39 was owned

by Tipperary considerably prior to the time of approval of the unit agreement by Survey, notwithstanding the erroneous Exhibit B originally submitted with the unit agreement. In this case the contractual agreement of the proponent of the unit (Tipperary) to commit its entire interest in tract 39 to the unit agreement is clear. Further, the evidence establishes that Tipperary held the entire working interest at the time of approval of the unit agreement by Survey and the only reason the tract was not considered by Survey to be committed at the time was the erroneous conclusion that less than the entire working interest was committed. Under the circumstances, unit tract 39 is properly regarded as committed to the unit and the well thereon is deemed a unit well.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge